



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

Washington, D.C. 20570

Tel. (202) 273-1991

May 18, 2007

W-3104

VISIT WWW.NLRB.GOV FULL TEXT
CASES SUMMARIZED

The Arizona Republic	Phoenix, AZ	1
G.E. Maier Co.	Cincinnati, OH	2

OTHER CONTENTS

List of Decisions of Administrative Law Judges	2
List of Unpublished Board Decisions and Orders in Representation Cases <ul style="list-style-type: none">Contested Reports of Regional Directors and Hearing Officers	3

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (www.nlrb.gov). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14th Street, NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. As of August 1, 2003, Administrative Law Judge decisions are on the Web site.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

The Arizona Republic, a Div. of Phoenix Newspapers, Inc. (28-RC-6304; 349 NLRB No. 95) Phoenix, AZ May 8, 2007. Chairman Battista and Member Schaumber found, contrary to the Regional Director, that under the standards of *St. Joseph News-Press*, 345 NLRB No. 31 (2005) (*News-Press*), the Employer's newspaper carriers are independent contractors excluded from the protection of the Act, and not statutory employees within the meaning of Section 2(3). The majority reversed the Regional Director and dismissed the petition filed by Graphic Communications Local 58-M seeking an election in a carrier unit. Member Liebman dissented. [\[HTML\]](#) [\[PDF\]](#)

The Board remanded this case to the Regional Director in 2004 for further consideration in light of its finding in *News-Press*, applying the common-law agency test, that the *News-Press* newspaper carriers were independent contractors. The Board noted in *News-Press* that its finding was consistent with cases decided before *Roadway Package System*, 326 NLRB 842 (1998), and *Dial-A-Mattress Operating System*, 326 NLRB 842 (1998), in which it found newspaper carriers to be independent contractors. See, e.g., *The Evening News*, 308 NLRB 563 (1992); *Thomson Newspapers*, 273 NLRB 350 (1984).

In his supplemental decision, the Regional Director found that the facts in *News-Press* were "significantly different" from those in this case and that all of the *News-Press* factors weighed in favor of finding employee status. He reaffirmed his original conclusion that the Employer's newspaper carriers are statutory employees and that the petitioned-for unit was appropriate.

The majority, in this decision on review, found the facts in this case are remarkably similar to those in *News-Press* and accordingly, relied on the Board's analysis of the common-law factors as applied to the newspaper carriers in *News-Press*. Chairman Battista and Member Schaumber wrote: "We find that a comparison of the common-law factors in this case with those factors in *News-Press* demonstrates, on balance, that the Employer's newspaper carriers are independent contractors. Moreover, our finding here is consistent with the pre-*Roadway* cases finding newspaper carriers to be independent contractors."

Dissenting Member Liebman wrote:

Contrary to the majority's view, economic dependence is a relevant factor in determining employee status under the common-law test incorporated by the National Labor Relations Act. By refusing to consider this factor, the majority wrongly ignores economic realities and present legal trends, as fully discussed in my dissent in *St. Joseph News-Press*, 345 NLRB No. 31 (2005). Here, based on their economic dependence on the newspaper, together with other relevant factors, I would find that the carriers were statutory employees, and not independent contractors. But even under the majority's view of the common-law test, I would reach the same conclusion, in agreement with the Regional Director.

(Chairman Battista and Members Liebman and Schaumber participated.)

G.E. Maier Co. (9-CA-42602; 349 NLRB No. 98) Cincinnati, OH May 9, 2007. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide Carpenters Ohio and Vicinity Regional Council the information it requested in its Jan. 5, 2006 letter, regarding the Respondent's relationship with two other companies. [\[HTML\]](#) [\[PDF\]](#)

In defense, the Respondent argued that it never had a duty to bargain with the Union because James Fangmeyer acted without authority when, at a jobsite in Wellston, OH in May 2002, he signed the Union's "Acceptance of Agreements," which provided that the Respondent agreed to recognize the Union and to abide by the Union's collective-bargaining agreement with area contractor associations. The Board, in agreeing with the judge that Fangmeyer had apparent authority to bind the Respondent, explained:

Here, the Respondent had provided Fangmeyer with business cards identifying him as its "Vice-President Installations," and Fangmeyer had given one of those cards to union organizer Mark Johnson at the Wellston jobsite. Moreover, the Respondent had authorized Fangmeyer to hire workers and to take any other necessary steps to complete the work at a jobsite, and Fangmeyer had exercised that authority in hiring an apprentice through the Union at the Wellston jobsite. In these circumstances, we find it reasonable for the Union to believe that Fangmeyer was authorized to sign the Acceptance of Agreements on the Respondent's behalf. See *Horizon Group of New England*, 347 NLRB No. 74, slip op at 12 (2006).

No exceptions were filed to the judge's findings that the Respondent did not timely terminate its obligations to the Union under the June 1, 2005 collective-bargaining agreement, and that the Union established the relevance of the information requested in the Jan. 5, 2006 letter to the Respondent.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Carpenters Ohio and Vicinity Regional Council; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Cincinnati on June 20, 2006. Adm. Law Judge Arthur J. Amchan issued his decision Aug. 28, 2006.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

San Luis Trucking, Inc. and its alter ego Servicios Especializados Del Colorado (Food & Commercial Workers Local 99) San Luis, AZ May 8, 2007. 28-CA-20387, et al.; JD(SF)-12-07, Judge Joseph Gontram.

County Waste of Ulster, LLC (Laborers Local 108) Montgomery, NY May 9, 2007. 2-CA-37437, 2-RC-22858; JD(NY)-22-07, Judge Raymond P. Green.

P.G.H.C.C., Inc., d/b/a Pacific Grove Convalescent Hospital (SEIU United Healthcare Workers West, Service Employees) Pacific Grove, CA May 9, 2007. 32-CA-22879, 22894; JD(SF)-13-07, Judge Gerald A. Wacknov.

**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS
IN REPRESENTATION CASES**

*(In the following cases, the Board considered exceptions to
Reports of Regional Directors or Hearing Officers)*

DECISION AND CERTIFICATION OF REPRESENTATIVE

The Butcher Block, Inc., Boston, MA, 1-RC-22056, May 8, 2007 (Members Liebman, Schaumber, and Kirsanow)
